

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA FILED

Gerry David Gallardo
41571-080
Your full name

AUG 05 2021

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

FEDERAL TORTS CLAIM ACT
COMPLAINT

v.

Civil Action No.: 1:21cv 111
(To be assigned by the Clerk of Court)

UNITED STATES OF AMERICA

Kleeh
Alo;
W: 11:00 am S

I. JURISDICTION

The Court has jurisdiction over this action pursuant to: Title 28 U.S.C. Section 2671, et seq. (FTCA) and Title 28 U.S.C. Section 1346(b)(1).

II. PLAINTIFF

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Your full name: Gerry David Gallardo Inmate No.: 41571-080
Address: Federal Correctional Institution-Hazleton
P.O. Box 5000, Bruceton Mills, WV 26525

III. PLACE OF PRESENT CONFINEMENT

Name of

Prison/Institution: Federal Correctional Institution-Hazleton

A. Is this where the events concerning your complaint took place?
 Yes No

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If you answered "NO," where did the events occur?

Federal Correctional Institution - Gilmer

201 FCI Lane

Glenville, WV 26351

IV. PREVIOUS LAWSUITS

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? Yes No
- B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "IV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court:

(If federal court, name the district; if state court, name the county)

3. Case Number: _____

4. Basic Claim Made/Issues Raised: _____

5. Name of Judge(s) to whom case was assigned: _____

6. Disposition: _____

(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: _____

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8. Approximate date of disposition. Attach copies: _____

C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?

Yes No

D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought. _____

E. Did you exhaust ALL available administrative remedies?

Yes No

F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted. _____

G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS" *N/A, since prior actions were dismissed without prejudice and are currently on appeal in the Fourth circuit and D.C. Circuit*

1. Parties to previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

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2. Name and location of court and case number: _____

3. Grounds for dismissal: frivolous malicious
 failure to state a claim upon which relief may be granted
4. Approximate date of filing lawsuit: _____
5. Approximate date of disposition: _____

V. ADMINISTRATIVE REMEDIES PURSUANT TO THE FTCA

- A. Did you file an FTCA Claim Form (SF-95), or any other type of written notice of your claim, with the appropriate BOP Regional Office?
 Yes No
- B. If your answer is “YES,” answer the questions below:
 1. Identify the type of written claim you filed: Loss of personal property
 2. Date your claim was filed: Submitted on November 10, 2020
 3. Amount of monetary damages you requested in your claim:
\$4,390.74
 4. If you received a written Acknowledgment of receipt of your claim from the BOP, state the:
BOP has not acknowledged, not even to two separate queries as to the status of said FTCA claims described above
 - i. Date of the written acknowledgment: _____
 - ii. Claim Number assigned to your claim: _____
- C. If your claim involves individuals who are employed by government agencies **other than the BOP**, did you file an FTCA Claim Form (SF-95), or any other type of written notice of your claim with the appropriate government agencies? Yes No *N/A*

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D. If your answer is "YES," answer the questions below:

1. Identify the specific government agency or agencies, including the addresses, where you filed notice of your claim:

2. Identify the type of written claim(s) you filed: _____

3. Date your claim(s) were filed: _____

4. Amount of monetary damages you requested in your claim(s): _____

5. If you received a written Acknowledgment of receipt of your claim(s), state the:

- I. Date of the written Acknowledgment: _____

- ii. Claim Number assigned to your claim: _____

E. If the BOP (or other government agency that received notice of your claim) either denied your claim or offered you a settlement that you did not accept, please state whether you requested reconsideration of your claim.

Yes No *N/A*

1. If you answered "YES," state the:

- I. Date you requested reconsideration: _____

- ii. Date the agency acknowledged receipt of your request for reconsideration: _____

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State here, as **BRIEFLY** as possible, the facts of your case. You must include allegations of specific wrongful conduct as to EACH and EVERY federal employee about whom you are complaining. Describe exactly what each federal employee did. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN A SEPARATE CIVIL ACTION. NO MORE THAN FIVE (5) TYPED OR TEN (10) LEGIBLY PRINTED PAGES MAYBE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: BOP Staff at FCI Gilmer failed to follow BOP policy and personally collect and inventory plaintiff's personal property located within the cell, personal locker and separate legal materials locker, but permitted another inmate to go through such personal property and decide what would be inventoried and what such other inmate would keep.
Supporting Facts: In the over 30 years in the BOP system, I have personally witnessed unit officers direct other inmates, usually the cell-mate, to pack up the inmate taken to the special housing unit and resulting in said other inmate keeping the personal property of the subject inmate, and that is what is alleged here and resulted in such loss of personal property.

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

Unknown Unit officer who inventoried my personal property the other inmate brought to the officer's station, thus the inmate, because of said unknown unit officer, stealing the property at implied consent of the unit officer who does not question such conduct of stealing,

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? Yes No

If your answer is "YES," please explain: As the Unit officer, he is charged with, and responsible for, personally collecting the personal property of an inmate and is not to enlist another inmate to collect such property because of thievery by said other inmate, CLAIM 2: and falls on the Unit officer's fault and liability,

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Supporting Facts: _____

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual: /

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? Yes No

If your answer is "YES," please explain: _____

CLAIM 3: _____

Supporting Facts: _____

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? Yes No

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If your answer is "YES," please explain: _____

CLAIM 4: _____

Supporting Facts: _____

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? Yes No

If your answer is "YES," please explain: _____

CLAIM 5: _____

Supporting Facts: _____

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Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? Yes No

If your answer is "YES," please explain: _____

VII. INJURY

Describe **BRIEFLY** and **SPECIFICALLY** how you have been injured or your property damaged and the exact nature of your damages. *By permitting another inmate to perform his/her duty to collect and inventory, by allowing another inmate to rummage through an inmate's personal property, thus deciding to keep much of it for himself without the Officer's knowledge because of such unallowed and unpermitted collection of another inmate's personal property, and permitting such theft by another inmate, the BOP Officer subjects the United States to liability under the FTCA.*

VIII. RELIEF

State **BRIEFLY** and **EXACTLY** what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

*Issue declaratory judgment in favor of plaintiff, and award the demands of \$4,390.74, and court costs and fees, as the Court may grant "upon allegation and proof of intervening facts," under *Lopezina v. United States*, 528 Fed. Appx. 352, 356 (4th Cir. 2013), "relating to the amount of the claim" to cover court costs and fees.*

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DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at FCI Hazelton, Bruceton Mills, wv on July 23, 2021.
(Location) (Date)


Your Signature